

Delhi High Court

Delhi High Court

+ W.P.(C) 5812/2010 vs Pinki Ganeriwal on 8 November, 2013

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 08.11.2013

+ W.P.(C) 5812/2010

UPSC Petitioner Through: Mr Vardhman Kaushik and Mr

Naresh Kaushik, Advs.

versus

PINKI GANERIWAL Respondent Through: None.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

Vide application dated 12.09.2008, the respondent sought the

following information from the CPIO of the petitioner-UPSC:-

"a) Subject matter of information:-

Selection list of eleven number of Dy Director of Mines Safety (Mining) by UPSC in pursuance of ref no of F.I./287/2006/R-VI contained in advertisement no 8/03 (Employment News 28 April-4May 2007)

(b) The period to which the information relates:-

Year 2008-09

W.P.(C) No.5812/2010 Page 1 of 7 (c) Specific details of information required:- Please provide the seniority cum merit list of selected eleven number of Dy Director of Mines Safety (Mining) by UPSE in

pursuance of ref no of F.I./287/2006/R-VI contained in advertisement no 08/03

(Employment News 28 April-4 May 2007) for appointment in Director General of Mines Safety, Dhanbad under Ministry of Labour and Employment, New Delhi. The list should contain the details of date of birth, institution & year of passing their graduation, field experience of company and marks obtained in interview and caste of the candidate.

2. The information (a) and (b) above has already been provided to

the respondent. As regards information at (c) above, the petitioner has already provided the list of the recommended candidates along with their inter se seniority-cum-merit and the same is available at page 43 of the paper book. The petitioner, however, has declined to provide information such as date of birth, institution and year of passing graduation, field experience, marks obtained in interview and the caste of the selected candidates.

3. The Central Information Commission vide impugned order dated 07.06.2010, while dealing with the plea of the petitioner that being personal information of the selected candidates, the aforesaid

W.P.(C) No.5812/2010 Page 2 of 7 information is exempt from disclosure under Section 8(1)(j) of the Right to Information Act, inter alia, held as under:-

"In this case although the information can arguably be treated as personal information, under no circumstances can information given for participation in a public activity like a public examination be deemed to have no relationship to such public activity.

Shri Kamal Bhagat, Jt. Secretary, has argued that it is not the practice in the UPSC to disclose interview results for those candidates as are not selected. In this case, however, appellant Ms. Pinki Ganeriwal has asked for information only regarding a selected candidates. This information which was not received by the appellant on the ground taken by the CPIO, UPSC, will now be provided to appellant Ms. Pinki Ganeriwal within 10 working days from the date of receipt of this decision notice. The appeal is thus allowed. There will be no costs, since appellant has not been compelled to travel to be heard, and the responses of CPIO, although held to be inadequate, were made according to the time mandated and as per CPIO's genuine

understanding of the law, and therefore not liable to penalty."

4. A similar issue came up for consideration before this Court in

W.P.(C) No. 6508/2010 titled UPSC vs. Mator Singh, where the

W.P.(C) No.5812/2010 Page 3 of 7 respondent before this Court had inter alia sought information such as particulars (name, qualification and experience) of eligible applicants for appointment to 7 post of Principal (female) reserved for Scheduled Castes in response to UPSE special advertisement No. 52/2006. The CPIO declined to provide the aforesaid information and the first appeal

filed by the respondent was also dismissed. In a second appeal filed by the respondent, the Central Information Commission directed disclosure of the aforesaid information. Setting aside the order passed by the Commission, this Court, inter alia, held as under:-

"5. A similar issue came up for

consideration before the Honâ ble Supreme Court in Union Public Service Commission Vs. Gourhari Kamila 2013 (10) SCALE 656. In the aforesaid case, the respondent before the Apex Court had sought inter alia the following information:

"4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.3.2010?

5. Kindly provide the certified xerox copies of experience certificates of all the candidates called for the interview on 16.3.2010 who have

W.P.(C) No.5812/2010 Page 4 of 7 claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl.No. 10(B) of Part-I of their application who are called for the interview held on 16.3.2010."

The Central Information Commission directed the petitioner-UPSC to supply the aforesaid information. Being aggrieved from the direction given by the Commission, the petitioner filed WP (C) No.3365/2011 which came to be dismissed by a learned Single Judge of this Court. The appeal filed by the UPSC also came to be dismissed by a Division Bench of this Court. Being still aggrieved, the petitioner filed the aforesaid appeal by way of Special Leave. Allowing the appeal filed by the UPSC, the Apex Court inter alia held as under, relying upon its earlier decision in Bihar School Examination Board Vs. Suresh Prasad Sinha (2009) 8 SCC 483:

"One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted

W.P.(C) No.5812/2010 Page 5 of 7 the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it."

The Apex Court held that the

Commission committed a serious illegality by directing the UPSC to disclose the information at points 4 & 5 and the High Court also committed an error by approving the said order. It was noted that neither the CIC nor the High Court recorded a finding that disclosure of the aforesaid information relating to other candidates was necessary to larger public interest and, therefore, the case was not covered by the exception carved out in Section 8 (1) (e) of the RTI Act.

6. In the case before this Court no finding has been recorded by the Commission that it was in the larger public interest to disclose the information with respect to the qualification and experience of other shortlisted candidates. In the absence of recording such a finding the Commission could not have directed

disclosure of the aforesaid information to the respondent."

5. In the present case, the information such as date of birth,

institution and year of passing graduation, field experience and caste is

W.P.(C) No.5812/2010 Page 6 of 7 personal information of the selected candidates. There is no finding by

the Commission that it was in larger public interest to disclose the

aforesaid personal information of the recommended candidates. Even in

his application seeking information, the respondent did not claim that

any larger public interest was involved in disclosing the aforesaid

information. In the absence of such a claim in the application and a

finding to this effect by the Commission, no direction for disclosure of

the aforesaid personal information could have been given.

6. For the reasons stated hereinabove, the impugned order dated

07.06.2010 passed by the Central Information Commission is hereby set

aside.

The writ petition stands disposed of. No order as to costs.

V.K. JAIN, J

NOVEMBER 08, 2013

BG

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